



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

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ATLANTA, GA 30303-8927

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August 30, 2016

Dr. John Jackson
Superintendent
Floyd County Schools
600 Riverside Parkway, N.E.
Rome, GA 30161

Re: Complaint #04-16-1327

Dear Dr. Jackson:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its case resolution process of the above-referenced complaint filed on March 23, 2016, against Floyd County Schools (District), in which the Complainant alleged that the District discriminated against her daughter (Student), who attends XXXXXXXX XXXX XXXXXX (School), on the basis of disability. Specifically, the Complainant alleged that the District failed to implement the Student's Section 504 Plan when her XXXX XXXXXXXXXX (XXXX XXXXXXXXXX) removed the Student from the XXXXXXXXXX XXXX in March 2016.

OCR investigated this complaint under Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance; and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 42 U.S.C. §§ 12131, *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The District receives Federal financial assistance from the Department and is a public entity. Therefore, OCR has jurisdiction over this complaint.

OCR investigated the following legal issue:

Whether, in March 2016, the District discriminated against the Student on the basis of disability and denied her a free appropriate public education (FAPE) by failing to implement her Section 504 plan when it removed her from the XXXXXXXXXX XXXX, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33, and the Title II implementing regulation at 28 C.F.R. § 35.130.

During the course of this investigation, OCR reviewed evidence submitted by the Complainant and the District and interviewed the Complainant. A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e.,

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sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred). Prior to the conclusion of the investigation, the District requested to address the complaint allegation with a voluntary resolution agreement (Agreement) pursuant to Section 302 of OCR's *Case Processing Manual*. Provided below is an analysis of OCR's investigation thus far of the legal issue.

Legal Standards

The regulation implementing Section 504 at 34 C.F.R. Section 104.33(a) and (b) requires a recipient to provide a free and appropriate public education to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the individual's disability. FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of individuals with a disability as adequately as the needs of individuals without a disability are met and are based upon adherence to procedures that satisfy the requirements of Sections 104.34, 104.35, and 104.36. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting the standard established above. Although the Title II regulations do not contain provisions specifically pertaining to the provision of a FAPE, as in the case of the Section 504 regulations, OCR interprets the Title II regulation's general prohibition against discrimination (at 28 C.F.R. § 35.130) to incorporate the relevant provisions of the Section 504 regulations.

Evidence Obtained Thus Far

The Student attended tenth grade at the School during the 2015-16 year and received accommodations pursuant to a Section 504 plan. In particular, according to the plan dated January 21, 2016, the Student was to receive tests in a small group setting as well as extended time. Additionally, the plan provides that the Student (1) is allowed to "cool down when she feels she is going to XXXX XXX or has XXXXXXX XXX at someone," (2) may take breaks to keep from XXXXXXX XXX, and (3) may visit the school counselor or Assistant Principal as needed.

The District submitted a series of emails between the Complainant and the XXXX XXXXXXXX in which they discuss the Student's behavior in the XXXXXXXX XXXX and her subsequent removal from it. In a March 22, 2016, email to the Complainant, the XXXX XXXXXXXX stated that the Student informed him that "she would never XXXXX again and she didn't have a good time." In response, the Complainant wrote:

As for her telling you she didn't want to XXXXX anymore and that she didn't enjoy it is a complete and perfect example of what I can't seem to get you all to recognize about her. She is XXXXXXX. She was medically diagnosed at the age of 6. No she will not grow out of it. No she can't help a lot of what she deals with on a daily basis. If she is upset or tired she says things she doesn't mean because she can't see the consequences of it.

The XXXX XXXXXXXXX replied, saying, “after reviewing [the Student’s] behavior log, I believe it is best if [the Student] does not XXXXX next year at this time;” and “sadly, I think it was she who quit her peers and our XXXXXXXXX XXXX when she directly refused to participate on several occasions.” In the March 22nd email, the XXXX XXXXXXXXX also provided the Complainant examples of how the Student refused to cooperate. In an email dated April 13, 2016, to the Complainant, the XXXX XXXXXXXXX wrote, “[the Student] has been suspended from XXXXXXXXX XXXX for one year for multiple instances of willful refusal to follow instruction(s) from peers, instructors . . . and myself.” The documentation does not indicate that the Complainant raised any concerns to the XXXX XXXXXXXXX or anyone else in the District regarding the implementation of the Student Section 504 plan with respect to XXXX until after the Student was advised that she could not XXXXX the next year.

OCR reviewed the Student’s general discipline history, which includes the following descriptions of incident reports during the 2015-16 year: left class without permission, dress code violation, disrespect for authority, and public display of affection. OCR also reviewed a summary sheet of the Student’s infractions specific to the XXXXXXXXX XXXX, including incidents involving the Student missing practice and sectionals, bossing other students around, and refusing to do work.

Reasons to Resolve Pursuant to CPM Section 302

As already noted, the Student’s Section 504 plan provides for breaks and the opportunity to visit the school counselor or Assistant Principal as needed. Documentation from the District shows the Student was suspended from the XXXXXXXXX XXXX for failing to follow directions and for statements the Student made with respect to her participation in the XXXX. Prior to the District’s request to resolve this complaint, OCR had not made a determination concerning whether the Student’s suspension from the XXXXXXXXX XXXX constituted, or resulted from, a denial of FAPE (i.e., whether the District provided the Student an opportunity to cool down and/or take breaks during band practice or classes) or otherwise subjected the Student to unlawful different treatment on the basis of disability.

Proposed Resolution and Conclusion

The attached Agreement requires the District to (1) send the Complainant (via certified mail) written correspondence inviting the Student to participate in the XXXXXXXXX XXXX for the 2016-17 year; (2) schedule a Section 504 team meeting to determine whether specific behavior interventions or accommodations are necessary or required for the Student to participate in XXXXXXXXX XXXX, if the Student elects to participate in the XXXXXXXXX XXXX; and (3) provide training to School staff regarding the District’s responsibilities under Section 504 and Title II. The training shall be provided by a source with expertise in Section 504 and Title II¹ and shall cover, at a minimum, the prohibition against discrimination and different treatment on the basis of disability and the requirement that school districts provide students with disabilities with FAPE.

¹ If the District desires, it may coordinate with OCR to provide the training at a mutually-agreeable time and place.
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The provisions of the Agreement are aligned with the complaint allegation and the information obtained during the investigation and are consistent with applicable regulations. OCR will monitor the implementation of the agreement until the recipient is in compliance with the statutes and regulations at issue in the case.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent possible, any personally identifiable information, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, or participated in any manner in an investigation in connection with a complaint.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. If you have any questions regarding this letter, please contact Daniel Sorbera, Investigator, at (404) 974-9466, or me at (404) 974-9367.

Sincerely,

Ebony Calloway-Spencer, Esq.
Compliance Team Leader

Enclosure